
(1977) 07 AHC CK 0002
In the Allahabad High Court
Case No : Sp. A. No. 938 of 1970

Asharfi Lal and Another

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 08-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145
United Provinces Tenancy (Amendment) Act, 1947 — Section 27(3)
United Provinces Tenancy Act, 1939 — Section 47(4)
Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 18, 18(1), 18(2), 19, 209

Citation : (1977) AWC 454

Hon'ble Judges : P.N. Harkauli, J;K.N. Singh, J

Bench : Division Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Singh, J.—This Special Appeal is directed against the judgment of a learned Single Judge dismissing the writ petition filed by the Appellants challenging the orders of the Revenue Courts decreeing the Respondents' suit for Appellants' ejectment u/s 209 of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 (hereinafter referred to as the 1957 Act).

2. The admitted facts which emerge from the findings of the court below, are that plots Nos. 868 and 869 situate in Qasba Roorkee district Saharanpur was under the hereditary tenancy of Pancham Singh. On 10th August 1959 Pancham Singh executed a registered lease-deed in favour of Narain Das predecessor-in interest of Respondent Nos. 4 and 5 letting out the said two plots to Narain Das for a period of five years. Narain Das obtained possession over the plots in dispute. Later on, Pancham Singh filed a civil suit in the court of Munsif for the cancellation of the lease-deed as well as for the issue of a permanent injunction restraining Narain Das from interfering with his possession over the plot in suit.

Narain Das resisted the suit. The trial court dismissed the suit. The findings of the trial court were affirmed by the first appellate court as well as by the High Court in Second Appeal. During the period of the aforesaid litigation, proceedings u/s 145 Code of Criminal Procedure were taken and the crops standing on the land in dispute were attached under a preliminary order issued by the Sub-Divisional Magistrate on May 12, 1961. Those proceedings terminated in favour of the Appellants and possession of the crops was handed over to the Appellants on 4th August 1961. On 17th December 1963, Narain Das filed a suit u/s 209 of the 1957 Act against the Appellants for their ejectment from the plots in dispute on the pleadings that u/s 18(2) of the 1957 Act he had acquired Sirdari rights and he was entitled to regain possession from the Appellants whose possession was otherwise than in accordance with law. The suit was resisted by the Appellants who claimed that they had acquired Sirdari rights u/s 18(1) of the 1957 Act and their possession over the plots in dispute was not otherwise than in accordance with law. The trial court decreed the Respondent's suit and passed a decree for ejectment against the Appellants. On appeal, the Commissioner as well as as the Board of Revenue, affirmed the judgment and decree of the trial court. Thereafter, the Appellants filed a writ petition in this Court challenging orders of the revenue courts, under Article 226 of the Constitution. The writ petition was dismissed by a learned Single Judge of this Court. Hence, this appeal.

3. Sri G.N. Verma, learned Counsel for the Appellants, urged that since Pancham Singh, the predecessor-in-interest of the Appellants, was hereditary tenant of the plots in question on the date of vesting, he acquired Sirdari rights u/s 18(1) of the 1957 Act, and the Appellants who were the successors of Pancham Singh were entitled to retain possession, the Respondent's suit u/s 209 was not maintainable. We find no merit in the contention.

4. Section 18 is in the following words:

* * * * * Section 18 conferred sirdari rights on certain class of persons. Sub-section (1) conferred sirdari rights on a person holding agricultural land immediately preceding the date of vesting as a tenant, or holding on special terms in Avadh, an ex-proprietory tenant, an occupancy tenant, a hereditary tenant, a grantee at favourable rate of rent, a non-occupancy tenant and sub-tenant (as contemplated by Sub-section (4) of Section 47 of the United Provinces Tenancy Act 1939). The Sirdari right so conferred is subject to the provisions of Section 19 of the Act and the right to take or retain possession of the land is subject to the provisions of the Act. Sub-section (2) confers Sirdari right on a tenant of Sir and a sub-tenant of land other than grove land, it lays down that every person who, on the date immediately preceding the date of vesting, was or has been deemed to be in accordance with the provisions of the Act, a tenant of Sir, or a sub-tenant other than a sub-tenant as contemplated by the proviso to Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947, is entitled to the right of a Sirdar. The sub-section further confers additional rights

to take or retain possession of the land of which he may be sub-tenant on the date of vesting, and the land shall be deemed to be settled with these two class of persons by the State Government. Thus Sub-section (2) conferred Sirdari rights on the sub tenants of Sir and other land (except the grove land) and authorised them to take and retain possession of the land and by a legal fiction, the land shall be deemed to be settled by the State Government with them.

5. The Respondents were sub-tenants of a land which did not fall within the exceptions provided under Sub-section (2) namely, the land in question was not grove land, instead it was agricultural land. The Respondents were sub-tenants on the date of vesting and they acquired Sirdari rights u/s 18(2) of the Act. The revenue courts as well as the learned Single Judge both held that since the Respondents were sub-tenants, on the date of vesting namely July 1, 1961, of the land in question, they acquired Sirdari right u/s 18(2) of the Act. We find no error in the findings recorded by the Revenue Courts and the learned Single Judge.

6. Learned Counsel for the Appellants, however, urged that the Appellants being the hereditary tenant on the date of vesting, had acquired Sirdari rights u/s 18(1) and they were entitled to take or retain their possession as such. Their rights could not be defeated by Section 18(2) of the Act. We find no merit in the contention. Section 18(1) confers Sirdari rights on a number of class of persons subject to the provisions of the Act. Section 18(2) is a part of the Act, therefore, the right of a Sirdar who took or retained possession of a land under Sub-section (1) is subject to the provisions of Sub-section (2). As noted above, Sub-section (2) confers Sirdari rights on sub-tenants while Sub-section (1) confers Sirdari rights on tenants. The legislature in order to confer right on sub-tenants enacted Sub-section (2) which overrides the provisions of Sub-section (1). The right of a sub-tenant as contemplated by Section 18(2) have precedence over the right of a tenant. Thus if a tenant acquires Sirdari right under Sub-section (1), but if there be a sub-tenant falling within the class contemplated by Sub-section (2), the subtenants' right to take and retain possession of the land shall prevail over that of the tenants right. This is in conformity with the legislative intent of agrarian reform which gave preference to sub-tenants who were generally tillers of the soil. If the Appellants' contention is accepted, the legislative intent as expressed in Sub-section (2) conferring Sirdari rights on a sub-tenant shall be defeated. It is well settled principle that a harmonious construction should be placed to the sub-sections of a section for the purpose of giving effect to the legislative intent and object. In view of this principle, we are of the opinion that the Respondents being sub-tenants acquired Sirdari rights in the land in question and they further acquired right to take possession from the Appellants.

7. Learned Counsel then urged that since the Appellants possession was not otherwise than in accordance with law, the suit u/s 209 was not maintainable. In this context, it was urged that since the Appellants were hereditary tenants of the plots in dispute they had acquired Sirdari right and their possession in the

eye of law, could not be that of a trespasser or otherwise than in accordance with law, and as such they could not be ejected at the instance of a sub-tenant. We find no substance in the contention. The facts noted earlier show that Narain Das entered into possession of the plots in question under a registered lease-deed which was held valid by court and his possession was upheld by the civil courts throughout. Under the terms of the registered sale-deed Narain Das and his successors in-interest were entitled to be in possession of the land for a period of five years which could expire in August 1964 and before that date the Appellants could not regain possession of the land except in accordance with law by filing a suit for obtaining possession of the land. Admittedly, no suit for possession was filed, and the sub-tenancy was never terminated. In such a situation the Appellant's possession over the plots in dispute was not in accordance with law. No doubt the possession of the plots in question had been delivered to the Appellants in proceedings u/s 145 Code of Criminal Procedure but that possession should not be in accordance with law. The possession handed over to a party in proceedings u/s 145 Code of Criminal Procedure is temporary and always subject to the final determination of the rights of parties in suit, See Bhinka and Others Vs. Charan Singh, . Since the Appellants' possession was not in accordance with law they were liable to be ejected at the instance of the Respondents who were entitled to take and retain possession of the land in dispute. In our opinion, therefore, the Respondents' suit u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act was maintainable.

8. In the result, the appeal fails and is accordingly dismissed with costs.